

Office of the State Public Defender

Administrative Policies

Subject: Determination of Indigence	Policy No.: 105
Title 47	Pages: 7
Section: 1-111	Last Review Date: 2-20-09
Effective Date: 7-1-06	Revision Date: 7-1-09

1.0 POLICY

- 1.1 The Office of the State Public Defender (hereinafter OPD) will provide public defender services to applicants that qualify under 47-1-111, MCA.
- 1.2 When a court orders OPD to assign counsel, the office shall immediately assign counsel prior to a determination of indigence.

2.0 PREPARATION AND DELIVERY OF INDIGENCE FORM

- 2.1 All district and limited courts will send appointment forms to Regional Public Defender Offices. The appointment form is provided by the Central Office, and provides information about the applicant for public defender services.
- 2.2 The Central Office shall provide the Regional Public Defender Offices with Indigence Determination (ID) forms as prepared by OPD and approved by the Montana Public Defender Commission.
- 2.3 Regional Deputy Public Defenders or their staff will deliver forms to all jails and courthouses and any other venue deemed appropriate.
- 2.4 An applicant for public defender services will be assigned provisional counsel prior to the determination of the applicant's indigence.
- 2.5 An applicant for public defender services must complete the ID form, sign it, and return it to the Regional Public Defender Office within ten days of appointment. The office will move to rescind the appointment if the required materials are not provided.
 - 2.5.1 An applicant may be required to provide documentation of income, which might include pay stubs or tax returns.
- 2.6 Indigence Determination Specialists (IDS), appointed by each Regional Public Defender Office, will aid any applicant requesting assistance. Information on the ID form is confidential.

3.0 DETERMINATION OF INDIGENCE

- 3.1 The IDS will review the ID form, fill in any missing information, and assure that the ID form is signed by the applicant.
- 3.2 The IDS will conduct two tests to determine if an applicant is eligible for state public defender services.
 - A. The first test is a "Gross Household Income Test" that gathers all gross income from all occupants in the applicant's household. This Gross

Household Income is compared to the Gross Income Guidelines as provided in Attachment A to this policy. If the Gross Household Income dollar amount is less than the dollar amount listed on the Gross Income Guidelines, the applicant passes this test. If the applicant fails the first test the IDS must go to the second test.

B. When the IDS determines that an applicant seeking public defender services is not clearly indigent within the meaning of subsection A above, the IDS shall then determine if the applicant qualifies because retaining competent private counsel would result in substantial hardship to the applicant or his household. This second test reviews both the disposable income and assets of the applicant. Disposable income is Gross Household Income less all expenses (rent, utilities, food, medical and loan payments, child support, etc). Assets are things that can be used as collateral to obtain loans, like homes, land, automobiles, investments, etc. This test is rather subjective in that the IDS must make the determination that the applicant can obtain, without substantial hardship, competent private legal counsel by paying legal retainers from net monthly income or borrowings on assets. The crime charged shall also be a factor considered in this determination.

- 3.3** If the applicant passes either test they are eligible for services. If qualifying under subsection A or B above, the person may, as appropriate, be asked to repay some or all of the costs of representation.
- 3.4** If qualified under either subsection, the court before which the person is appearing will be advised that the person has qualified for public defender representation.
- 3.5** If the IDS has a question regarding an applicant's eligibility for public defender services, the Indigence Determination Officer (as appointed by the Chief Public Defender) will make a ruling.
- 3.6** If the applicant is eligible for public defender services, a written notice of approval shall be sent to the applicant, and the appropriate public defender office, contract attorney, or conflict coordinator.
- 3.7** Applicants approved for public defender services will be subject to eligibility review by the IDS every six months. If an applicant is found to be financially able to provide for their own defense they will be notified by the IDS and parts 3.8 through 3.11 of this policy and procedure will apply.
- 3.8** If the applicant does not qualify for public defender services, a written notice of disqualification and notice of the right to have the court review the finding will be sent to the applicant.
- 3.9** The Regional Deputy Public Defender shall immediately notify the court of record when it is determined that an applicant does not qualify for public defender services (refer to Attachment B, Standard Letter of Notification of Denial, and Attachment C, Motion to Rescind Appointment).
- 3.10** The judge must rescind the appointment of counsel when notified that an applicant does not qualify for public defender services.

- 3.11** A judge may overrule a determination that an applicant is not eligible for public defender services. If overruled, OPD will provide public defender services to the applicant.

4.0 RECOVERY OF ATTORNEY FEES BY OPD

- 4.1** If the applicant qualified under 3.2, and the applicant is found guilty by plea or trial, the Regional Deputy Public Defender or his/her designee shall determine the amount owed for public defender services.
- 4.2** If the defendant has some ability to pay, then in determining both the amount and method of payment any payment plan must take into consideration the financial resources of the defendant and the nature of the burden that payment of costs will impose.
- 4.3** The hourly rate for public defender services is set at \$67.00 plus third-party costs;
- A. The amount of time spent on a case shall conform to the amount of time reported on the public defender's timesheet.
 - B. A copy of the bill along with notification of where payments shall be made will be provided to the client and placed in the client's file.
- 4.4** If the person is acquitted or the charges are dismissed, no reimbursement will be sought.

5.0 CLOSING

Questions about this policy should be directed to the OPD Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A
GROSS INCOME GUIDELINES

2009

<u>Number of Persons in Household</u>	<u>Gross Household Income Guidelines</u>
1	\$14,404
2	\$19,378
3	\$24,352
4	\$29,327
5	\$34,301
6	\$39,275
7	\$44,249
8	\$49,223
Each Additional Member Add:	\$4,974

ATTACHMENT B
STANDARD LETTER OF NOTIFICATION OF DENIAL

Name
Regional Deputy Public Defender
Region (#)
(Address)

(Date)

(Client Name)
(Client Address)

Dear (Client):

Please be advised that in applying the criteria outlined in Section 47-1-111 MCA to the information you provided on your indigency questionnaire, I have determined that you do not qualify for public defender services. The Office of the State Public Defender will ask the Court to rescind the appointment of a public defender. You must hire a private attorney within 10 days of this letter or represent yourself.

Your next court appearance is scheduled for (date) (time) in _____
Court.

If you do not agree with this determination, you have the right to ask the judge in your case to review your financial status. If you do ask for review, we are required to make your indigency questionnaire available to the judge and the prosecutor for inspection.

Sincerely,

Regional Deputy Public Defender
Region (#)

ATTACHMENT C

MOTION TO RESCIND APPOINTMENT OF PUBLIC DEFENDER

Name
Regional Deputy Public Defender
Region (#)
(Address)

Telephone:

MONTANA (XXXXX) JUDICIAL DISTRICT COURT, (XXXX) COUNTY

STATE OF MONTANA,)	
)	
Plaintiff,)	Cause No. _____
)	
v.)	MOTION TO RESCIND
)	APPOINTMENT OF PUBLIC
)	DEFENDER
)	
_____,)	
)	
Defendant.)	

COMES NOW, (RDPD), attorney for Defendant, (Name), and hereby moves the Court to rescind the appointment of the Office of the State Public Defender because the Defendant does not meet the criteria set out in Section 47-1-111, MCA, to be eligible for representation by the Office of the State Public Defender.

The Defendant has been notified of this determination as well as his right to ask this Court to review the determination.

DATED this ____ day of _____, 200__.

(Name)

Regional Deputy Public Defender

Region (#)

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing MOTION TO RESCIND APPOINTMENT, postage prepaid, by U.S. mail, to the following:

Dated this ____ day of _____, 200__.